

Appl. No. 09/600,094
Amendment dated July 7, 2003
Reply to Office Action of January 7, 2003

REMARKS

The Office Action mailed January 7, 2003 has been received and the Examiner's comments carefully reviewed. Claims 1, 15, and 55 have been amended and claims 16, 28-34, and 56 have been canceled. Claims 1-15, 17-25 and 35-55 are currently pending.

Applicants submit that the amended and newly presented claims are supported by the specification. In particular, claim 1 has been amended to include the limitations of claim 56. Claim 15 has been amended to include the limitations of claim 34. Claim 56 has been amended to independent form.

For at least the following reasons, Applicants respectfully submit that the pending claims are in condition for allowance.

Allowable Subject Matter

In the interest of furthering prosecution, the Applicants have canceled claims or amended the claims to obviate rejections by including limitations from other claims not subject to the rejections.

Rejection of Claims Under § 112, Second Paragraph

The Examiner rejected claims 15-23 and 55 under 35 U.S.C. § 112, second paragraph. The Examiner objected to certain terms and phrases used in the claims. Applicants respectfully traverse this rejection.

The Examiner objected to the recitation in claim 15 of the phrases "being configured to" and "configured to." While not conceding the correctness of the Examiner's position, in the interest of advancing prosecution, claim 15 has been amended to no longer include those phrases. New terms have been used that do not narrow the scope of the claim.

The Examiner objected to claims 16 and 18 as reciting an oxygen level detector as an oxygen electrode or a fluorometric detector and depending from a claim with optical components. Claim 16 has been canceled. However, Applicants submit that claim 18 is proper because fluorometric detectors include optical components.

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Claim 55 has been amended, as suggested by the Examiner, rendering the rejection moot for this claim.

Accordingly, it is believed that the amended claims fully comply with § 112, second paragraph, and withdrawal of this rejection is respectfully requested.

Rejection of Claims Under § 101

The Examiner rejected claims 1-14 under 35 U.S.C. § 101 as claiming the same invention as claims 1-14 of U.S. Patent 6,037,181 (the '181 patent). Applicants respectfully traverse this rejection.

Independent claim 1 has been amended to include the limitations of dependent claim 56, indicated by the Examiner to be allowable if rewritten in independent form. Therefore, this rejection has been rendered moot and withdrawal of this rejection is respectfully requested.

The Examiner rejected claims 28-33 provisionally under 35 U.S.C. § 101 as claiming the same invention as claims 1-3 and 8-10 of copending Application No. 09/645,236. Applicants respectfully traverse this rejection.

Claims 28-33 have been cancelled rendering this rejection moot. Applicants respectfully request that this rejection be withdrawn.

Obviousness-Type Double Patenting Rejection

The Examiner rejected claims 28-33 under the judicially created doctrine of obviousness-type double patenting over claims 1-3 and 6-8 of U.S. Patent No. 6,037,181. Applicants respectfully traverse this rejection.

Claims 28-33 have been cancelled rendering this rejection moot. Applicants respectfully request that this rejection be withdrawn.

The Examiner provisionally rejected claims 1-2, 15-19, 23-25, 34 and 42 under the judicially created doctrine of obviousness-type double patenting over claims 12, 15-18, 24, 34-36, 39-40 and 48-53 of copending Application No. 09/645,236.

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Applicants submit that since this rejection is only provisional, and since the claims are allowable, it should be dealt with in the copending case. Applicants respectfully request that this rejection be withdrawn.

Rejection of Claims Under § 102(b)

The Examiner rejected claims 15, 17, 19, 22-23, 36, and 41-42 under 35 U.S.C. § 102(b) as being anticipated by Page et al. (from Chapter 9-Exp. Simulation of Oxygen Transport in Microvessels). Applicants respectfully traverse this rejection, but have amended claim 15, to include the limitations of claim 34, to advance this application to allowance. The Examiner did not reject claim 34 as anticipated by Page et al., therefore the incorporation of claim 34's limitations into claim 15 obviates the rejection as it applies to claim 15 and its dependents. Applicants reserve the right to pursue the original subject matter via a continuation application.

Withdrawal of this rejection is respectfully requested.

The Examiner rejected claims 28-33 under 35 U.S.C. § 102(b) as being anticipated by Runck et al. (USPN 3,779,708). Applicants respectfully traverse this rejection, but have canceled claims 28-33, rendering this rejection moot.

Withdrawal of this rejection is respectfully requested.

Rejection of Claims Under § 103(a)

The Examiner rejected claims 16, 18, 20-21 and 52-54 under 35 U.S.C. § 103(a) as being obvious over Page et al. in view of what is asserted to be Applicants' admitted prior art. Claims 16, 18, 20-21 and 52-54 depend upon claim 15. Further, the Examiner did not reject claim 34 as obvious over Page et al. in view of what is asserted to be Applicants' admitted prior art. Therefore, the incorporation of claim 34's limitations into claim 15 obviates the rejection as it applies to the dependents of claim 15. Accordingly, the rejection is rendered moot as it applies to claims 16, 18, 20-21 and 52-54.

Withdrawal of this rejection is respectfully requested.

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Summary

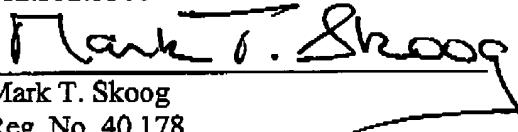
It is respectfully submitted that each of the presently pending claims is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.

Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicants reserve the right to raise these arguments in the future.

Respectfully submitted,

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